



DEPARTMENT OF THE ARMY  
OFFICE OF THE GENERAL COUNSEL  
104 ARMY PENTAGON  
WASHINGTON, DC 20310-0104



REPLY TO  
ATTENTION OF

January 8, 2004

MEMORANDUM FOR THE ASSISTANT SECRETARY (MANPOWER AND  
RESERVE AFFAIRS)

OFFICE OF THE ASSISTANT SECRETARY (MANPOWER AND RESERVE  
AFFAIRS) ATTN: MS. ELIZABETH PHILLIPS

SUBJECT: 18 U.S.C. § 207(c): Changes to Post Government Service  
Employment for All Army SES, Certain SL/ST/AL Positions, and Equivalently  
Paid Army Officials (Including Intergovernmental Personnel Act [IPA]  
Employees)—INFORMATION MEMORANDUM

The guidance that follows is temporary in nature. This guidance is based upon our best understanding of the new statute, pending publication of regulations by the Office of Personnel Management (OPM), which may amend this guidance.

Effective January 11, 2004, Army civilian personnel whose rate of basic pay is equal to or greater than 86.5% of the rate of basic pay for level II of the Senior Executive Schedule (SES) will be subject to the application of the post Government service employment restrictions of 18 U.S.C. § 207(c). Please NOTE Section 1125 of the National Defense Authorization Act of FY 2004 (PL 108-136). The effect of these changes means that if your basic pay meets that criteria, for a period of one year after leaving that pay rate, you are prohibited from making any communication or appearance on behalf of any other person, with the intent to influence, before any officer or employee of the agency or agencies in which you served within one year prior to leaving that pay rate, in connection with any matter on which official action is sought by the person you are representing. Except for Executive Level appointees (for whom all of DoD is considered to be the agency), DoD is composed of several distinct agencies for the purpose of this restriction: Army, Navy, Air Force, DISA, DIA, DLA, NSA (formerly NIMA), DTRA, NRO, NSA, and others. For example, a civilian official serving in the Army is prohibited from communicating with or appearing before any officer or employee of the Army, but may do so before officers or employees of OSD, Navy, or Air Force. To determine your base pay, please review the fifth paragraph of this Memorandum.

Another provision of section 1125 of the Act requires that personnel whose rate of basic pay, exclusive of locality-based pay adjustments, was equal to or greater than the rate of basic pay for level 5 of the SES as of November 23, 2003 (\$134,000), shall be subject to the application of 18 U.S.C. § 207(c) for a



period of 2 years from the date of enactment, which will be until November 24, 2005.

Except for SES levels 5 and 6, please be advised that if your pay level meets the applicable criteria at any time after November 23, 2003, and later falls below, you remain subject to the actual cooling-off period for 1 year after your pay rate falls below the criteria.

The important question is how to determine your rate of basic pay as of these various dates. It is confusing because the determination changes for SES on January 11, 2004, and differs between SES and other types of positions. The rate of basic pay for Executive Level II (EL II) is currently \$154,700, and OPM has calculated the 1.5% increase for the start of CY 2004, which for DoD is January 11, 2004, at \$157,000. The precise figure of 86.5% of that number is \$135,805. Please note that if and when Congress authorizes a higher pay raise, it will be retroactive and will change these figures accordingly.

For Army senior executives, as of January 11, 2004, the rate of basic pay within the new open pay range is the rate of basic pay plus the applicable locality pay as of the date of enactment, or November 24, 2003. This rate of basic pay may not be reduced because of the Act during the first year after January 11, 2004. After that period, the rate of basic pay will be determined by the rate of basic pay at which you are paid.

For anyone who was an SES level 5 or 6 on November 23, 2003, you will be subject to the application of 18 U.S.C. § 207(c), until at least November 24, 2005. Whether you will continue to be subject to the application of that provision will depend on your rate of basic pay at that time as compared to 86.5% of EL II.

For anyone in other levels of the SES whose combined rate of basic pay and applicable locality pay is equal to or greater than \$135,805 as of January 11, 2004, you will be subject to the application of 18 U.S.C. § 207(c) as long as your rate of basic pay remains at or above 86.5% of EL II. For members of the SES in the Washington-Baltimore locality area, the combined rate for current SES levels 2 through 4 will meet the criteria on January 11, 2004.

For personnel in the AL system, only AL-1 currently has a basic rate of pay at \$134,000, so any personnel paid at AL-1 on November 23, 2003, will be subject to the application of 18 U.S.C. § 207(c) until at least November 24, 2005. Whether you will continue to be subject to the application of that provision will depend on your rate of basic pay at that time as compared to 86.5% of EL II. The rate of basic pay in this system does not include locality pay. OPM has yet to determine the 2004 pay rates, but it is unlikely that anyone else in the AL system will be subject to the application of 18 U.S.C. § 207(c) as of January 11, 2004.

For personnel in the SL or ST systems, the maximum rate of basic pay is \$134,000, so any personnel whose rate of basic pay was the maximum rate on 11/23/03 will be subject to the application of 18 U.S.C. § 207(c), until at least November 24, 2005. Whether you will continue to be subject to the application of that provision will depend on your rate of basic pay at that time as compared to 86.5% of EL II. The rate of basic pay in this system does not include locality pay. For anyone else in those systems whose rate of basic pay is \$135,805 or above on January 11, 2004 (which is estimated at \$133,798 currently, prior to the 1.5% pay raise), you will be subject to the application of 18 U.S.C. § 207(c) as long as your rate of basic pay remains at or above 86.5% of EL II.

For personnel outside any of the systems discussed above, but who are in positions whose rate of basic pay meets the various thresholds, please refer to the section on SL/ST personnel immediately above for applicable guidance to your individual situation.

This guidance is temporary and is based on our best understanding of the new statute, pending publication of regulations by OPM, which may amend this guidance. Your personnel offices will apprise you as this guidance is developed. Immediate questions may be addressed to the undersigned at (703) 697-5105.



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